

The Honorable Judge Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, NORTHWEST  
TRUSTEE SERVICES, INC., MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

No. C10-1952 RSL

**DEFENDANTS ONEWEST, MERS,  
AND NWTS' OPPOSITION TO  
PLAINTIFF'S SECOND MOTION TO  
COMPEL DISCOVERY**

**NOTE ON MOTION CALENDAR:  
February 24, 2012**

**I. RELIEF REQUESTED**

COME NOW, Defendants OneWest Bank, FSB ("OneWest"), Mortgage Electronic Registration Systems Inc. ("MERS"), and Northwest Trustee Services, Inc. ("NWTS") (collectively "Defendants"), by and through their counsel of record Heidi E. Buck, in response to Plaintiff's Motion to Compel Discovery and respectfully request that the Court deny Plaintiff's untimely Second Motion to Compel Discovery.

**II. STATEMENT OF RELEVANT FACTS**

The following outlines the timeline of Plaintiff's Discovery Requests and Defendants responses and objections thereto:

- 1 • On or about April 4, 2011, Plaintiff filed with the Court his First Set of Requests for  
2 Production. [Dkt. 54].
- 3 • On or about May 5, 2011, Plaintiff filed a Motion to Compel. [Dkt. 56].
- 4 • On or about May 12, 2011, Defendants filed a Motion for Protective Order. [Dkt. 58].
- 5 • On or about June 13, 2011, the Court entered an Order denying Plaintiff's Motion to  
6 Compel and Defendants' Motion for Protective Order. [Dkt. 77]. The Court Ordered  
7 Defendants to respond to Plaintiff's Requests no later than 14 days from entry of the  
8 Order. *Id.*
- 9 • Fourteen days later on or about June 27, 2011, Defendants produced the documents in  
10 response to Plaintiff's First Set of Requests for Production. To that end, Defendants  
11 provided an explanation for those documents not produced advising that Defendants  
12 had no knowledge of the listed document or that Defendants were continuing their  
13 investigation and if responsive documents were located, they would be forthcoming.  
14 *See Declaration of Heidi Buck ("Buck Decl."), Exhibit 1.*
- 15 • On or about June 28, 2011, Defendants produced additional documents in response to  
16 Plaintiff's Requests for Production. Buck Decl., Exhibit 2.
- 17 • Between June 30, 2011 and July 11, 2011, Plaintiff and Defendants' counsel  
18 communicated to clarify and discuss documents that Plaintiff believed were still  
19 outstanding. Buck Decl.
- 20 • On or about July 1, 2011, Plaintiff propounded the Second Set of Requests for  
21 Production on Defendants. Buck Decl.
- 22 • On or about July 1, 2011, Defendants expressed willingness to stipulate to an  
23 extended discovery period. Buck Decl.
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- 1 • On or about July 8, 2011, the Court entered an Order referring the subject case to  
2 Honorable James P. Donohue for settlement proceedings. [Dkt. 80].
- 3 • On or about July 11, 2011, the Court entered an Order staying all proceedings before  
4 the assigned District Judge “with the exception of motions for emergency relief.”  
5 [Dkt. 83].
- 6 • On or about August 1, 2011, Defendants served Plaintiff with their Response to  
7 Plaintiff’s Second Set of Requests for Production. Buck Decl., Exhibit 3.
- 8 • On or about November 18, 2011, the Court entered an Order lifting the stay on  
9 proceedings. [Dkt. 91].
- 10 • On or about December 15, 2011, Plaintiff contacted Defendants’ counsel in regard to  
11 responsive documents he believed were outstanding to his First and Second Set of  
12 Requests for Production. Buck Decl.
- 13 • On or about December 21, 2011, Defendants’ counsel responded advising she had  
14 been out of the office and hoped to have something to Plaintiff by December 22,  
15 2011. Defendants’ counsel also advised that she would be out of the office December  
16 23, 2011 through January 3, 2012. Buck Decl.
- 17 • On or about December 22, 2011, Plaintiff responded advising that he believed any  
18 further delay was unacceptable. Buck Decl.
- 19 • Between December 15, 2011 and February 17, 2012, Defendants worked diligently to  
20 locate all additional documents responsive to Plaintiff’s First and Second Set of  
21 Requests for Production. Buck Decl.
- 22 • On February 3, 2012, Plaintiff filed a Second Motion to Compel. [Dkt. 96].  
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- On or about February 17, 2012, Defendants served on Plaintiff their Supplemental Responses to Plaintiff's First and Second Set of Requests for Production and requested the Plaintiff withdraw his Second Motion to Compel. Buck Decl., Exhibits 4 and 5, respectively.

### EVIDENCE RELIED UPON

Defendants' Opposition to Plaintiff's Second Motion to Compel is supported by the attached Declaration of Heidi E. Buck and the records and files already filed with the Court.

### III. ARGUMENT

Plaintiff's motion to compel is insufficient as it requests the Court to order Defendants to do what Defendants are "already obligated to do—namely, provide full, accurate, non-evasive responses to all requests for production." *Kane v. City of Bainbridge Island*, C10-5731 RBL, 2011 WL 1832820 (W.D. Wash. May 13, 2011). As the *Kane* Court held, "[t]his is not the purpose of a motion to compel under Fed. R. Civ. P. 37." *Id.* "Such a motion should only be made by specifying a particular response to a request for production under Fed. R. Civ. P. 34 that fails to meet the discovery requirements." *Id.* (citing *See* 37(a)(3)(B)(iii)-(iv)).

Here, Plaintiff has simply submitted a motion including a general citation to Fed. R. Civ. P. 34(b).

Furthermore, Defendants have demonstrated that they have complied with their duty to provide full, accurate, non-evasive responses to all requests for production.

Following the Court's June 13, 2011, Order, which directed Defendants to respond to Plaintiff's First Set of Requests for Production, Defendants complied by serving upon Plaintiff documents in response to Plaintiff's First Set of Requests for Production or objections to the Plaintiff's First Set of Requests for Production.

Following service of Plaintiff's Second Set of Requests for Production, Defendants served their responses on Plaintiff, which set out their objections thereto.

1 Following production of the documents responsive to Plaintiff's First Set of Requests for  
 2 Production, Defendants continued to discuss with Plaintiff additional discovery issues and search  
 3 diligently for additional documents at Plaintiff's request.

4 As of February 17, 2012, Defendants have certified to Plaintiff, for each Request  
 5 contained in Plaintiff's First and Second Set of Requests for Production that 1) while they have  
 6 engaged in a diligent search, they have discovered nothing that is responsive, but will  
 7 supplement if material responsive to the Request is later located, 2) that they have provided all  
 8 documents which are responsive, or that 3) they object and the reasons for such objection.

#### 9 IV. CONCLUSION

10 Plaintiff has failed to set forth with the required specificity what Requests for Production  
 11 he believes have been insufficiently answered, and Defendants have demonstrated they have  
 12 responded to Plaintiff's First and Second Set of Requests for Production in accordance with their  
 13 duties under the Federal Rules of Civil Procedure. Accordingly, the Defendants respectfully  
 14 request the Court deny Plaintiff's Second Motion to Compel.

15 DATED this 20<sup>th</sup> day of February 2012.

17 **ROUTH CRABTREE OLSEN, P.S.**

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 19 By: /s/ Heidi E. Buck

20 Heidi E. Buck, WSBA No. 41769  
 21 Attorneys for Defendants OneWest, MERS,  
 22 and Northwest Trustee Services, Inc.  
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